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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/718,155	11/21/2000	Koji Hayashi	10449-026001	8730
26161	7590	02/10/2006	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			DINH, TAN X	
		ART UNIT	PAPER NUMBER	
		2653		

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/718,155	HAYASHI, KOJI	
	<b>Examiner</b> TAN X. DINH	<b>Art Unit</b> 2653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 December 2005.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) \_\_\_\_\_ is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,4,8 and 11-13 is/are rejected.

7) Claim(s) 2,3 and 5-10 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

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1) The amendment filed 12/02/2005 is acknowledged.

2) The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed Terminal Disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A Terminal Disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3) Claims 1,4,8,11-13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3 and 9 of copending Application No. 119/178,889. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

The difference between claims 1 and 11 in this instant application and claim 3 of copending Application No. 11/178,889 is that claims 1 and 11 in this instant application recites the feature of switching the laser beam from read to write level and claim 3 of copending Application No. 11/178,889 is not. However, this difference is not a patentable weight since the laser beam must be switched

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during recording and reproducing processes ( the power levels between read and write are not the same ) and this would not make them a patentable distinction.

The different between claims 4 and 12 in this instant application and claim 3 of copending Application No. 11/178,889 is that claims 4 and 12 in this instant application recites the feature of restarting the writing after an interruption occurs and claim 3 of copending Application No. 11/178,889 is not. However, this different is not a patentable weight since the feature of resuming the recording or reproducing processes after an interrupting are old and well known in the art and this different would not make them a patentable distinction.

The different between claims 8 and 13 in this instant application and claim 3 of copending Application No. 11/178,889 is that claims 8 and 13 in this instant application recite the feature of the power source is activated when the writing of data is restarted and claim 3 of copending Application No. 11/178,889 is not. However, this different is not a patentable weight since power source in any optical recording and reproducing device must inherently activate after an interruption for restarting the operation and this would not make them a patentable distinction.

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4) Claims 2,3,5-7 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5) Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

6) Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAN XUAN DINH whose telephone number is (571)272-7586. The examiner can normally be reached on MONDAY-FRIDAY from 8:00AM to 5:00PM.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



TAN DINH  
PRIMARY EXAMINER  
February 8, 2006